IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4523 OF 2004

Vijay K. Singh ..Applicant

versus

1. M/s. The Luxury Club

2. The State of Maharashtra ..Respondents

Mr. A. P. Mundargi with V. Takalkar for the Applicant.

Mr. K. V. Saste, A.P.P. for the Respondent No.2.

CORAM : A.M. KHANWILKAR,J.

DATE : 20TH OCTOBER 2004.

P.C. :

1. Heard counsel for the parties. Notice was issued by this court on 18.10.2004 mentioning that the matter will be finally disposed of at notice stage as short question is involved. Pursuant to the said notice, the Respondents have been duly served. Affidavit of service has been filed. However, only learned APP appears for the Respondent No.2 - State.

2. The only grievance in the present Application that needs to be addressed is whether the court below was justified in issuing non bailable warrant on the first day of appearance in criminal cases for offences punishable under Section

138 of the Negotiable Instruments Act. To my mind, said approach is inappropriate and cannot be sustained. In such proceedings it is only after the court is satisfied that the accused is avoiding service or was obstructing the progress of the trial that such a course may be adopted. In any case issuing Non Bailable Warrants on the first day of appearance cannot be countenenced. Moreover that order is not recalled even when the applicant approached the same court for recall of the Non Bailable Warrant. Be that as it may, the order issuing Non Bailable Warrants against the applicant deserves to be set aside for the reasons already recorded above.

3. The applicant will appear before the trial court, through his Advocate as he is presently hospitalised and undergoing treatment for hip replacement and is advised bed rest for three months. Advocate on record for the applicant before the trial court shall prefer necessary application before the trial court for dispensing personal appearance of the applicant, which will be considered by the trail court taking into account the aforesaid fact. As and when the personal appearance of the applicant is required, the trial court may notify those dates in advance on which dates the applicant shall make himself available for the trial of the case. Application disposed of in the above terms.

A.M. KHANWILKAR, J.